

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:08-CR-62-1-F

No. 4:12-CV-2-F

GARLAND ELLISON,)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
Respondent.)	

This matter is before the court on Garland Ellison's Motion to Vacate, Set Aside or Correct his Sentence pursuant to 28 U.S.C. § 2255 [DE-75]¹ and a Motion for Default Judgment [DE-76].

Ellison has filed a Motion for Default Judgment [DE-76] on the basis that the Government has not responded to his § 2255 motion. Ellison argues that the Government was ordered to respond to his § 2255 motion more than six months ago, and as such, it has waived the right to file a response. The Government was not previously directed to respond to Ellison's § 2255 motion, and the Government is not required to do so unless and until so ordered. Accordingly, the Motion for Default Judgment [DE-76] is DENIED.

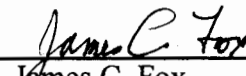
The undersigned has conducted an examination of petitioner's § 2255 motion pursuant to Rule 4(b) of the Rules Governing § 2255 Proceedings and has determined that dismissal is not warranted at this time. Accordingly, the United States Attorney is DIRECTED to file an Answer

¹Ellison's initial attempt to initiate a claim for relief under § 2255 was a non-conforming document and attachments which was filed on January 3, 2012. See Motion [DE-69]. At the court's direction, Ellison filed this "conforming" motion on June 18, 2012. See Motion [DE-75].

pursuant to Rule 5, Rules Governing § 2255 Proceedings, or to make such other response as appropriate to the above-captioned § 2255 Motion to Vacate, Set Aside or Correct Sentence, within **forty (40)** days of the filing of this order.

SO ORDERED.

This the 6th day of February , 2013.



James C. Fox
Senior United States District Judge